IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5511 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE JAYANT PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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JENABEN ARAB

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 5511 of 2002

MR PRANAV G DESAI for Petitioner No. 1

Ms.Harsha Devani,AGP for Respondent No. 1-4

MR YS MANKAD for Respondent No. 5

CORAM : MR.JUSTICE JAYANT PATEL

Date of decision: 26/06/2002

ORAL JUDGEMENT

Rule. Mr.Mankad appearing for the respondent No.5 Municipality and Ms.Devani, Ld.AGP appearing for respondent Nos 1,2,3 & 4 waive service of rule on behalf

of respective respondents. With the consent of the parties matter is taken up for final hearing.

2. The petitioner who is removed as the councillor of the municipality has preferred this petition against the order dated 6.6.02 passed by the Director of Municipalities on the alleged ground that she has committed disgraceful conduct as the councillor of the municipality.

3. Mr.Desai appearing for the petitioner submitted that in the letter dated 31.7.01, copy whereof is annexed at annexure "B", the Director of Municipalities has mentioned to the District Collector, Bhuj that the copies of the documents which have been applied may be supplied to the petitioner. But, he submitted that no documents were supplied to the petitioner. He submitted that the petitioner was waiting for the supply of documents and since the documents were not supplied the petitioner could not submit her written reply and as a result thereof the petitioner has been deprived of the opportunity to defend the case. Mr.Desai submitted that the authority has totally overlooked the said aspect and he further submitted that the petitioner would be satisfied if a direction is given by this court to supply the documents of the inquiry report held by the Mamalatdar and the statements of the persons concerned. Mr.Desai has further submitted that if the time bound programme is given to the Director of Municipalities and the Director of Municipalities is directed to give hearing to the petitioner and pass order afresh the petitioner would be satisfied, and the petitioner shall not insist for reinstatement as the councillor until the Director passes the order afresh.

4. On behalf of the Municipality, Mr.Mankad has submitted that the petitioner has committed disgraceful conduct by abusing the Chief Officer and by giving threat and therefore the Director of Municipalities has rightly removed the petitioner as the councillor.

5. On behalf of Director of Municipalities, Ms.Devani, Ld.AGP has submitted that it is recorded in the order the hearing was given and adjourned, from time to time, at the instance of the petitioner and about 15 adjournments were granted to the petitioner and the petitioner did not cooperate with the inquiry and as a result thereof the Director of Municipalities had no option but to proceed with the matter exparte and to pass the order. Ms.Devani submitted that, in any case, since the documents were not specifically demanded, same were

not supplied and the petitioner can not make a ground of nonsupply of documents and can not complain of breach of principles of natural justice.

6. Considering over all facts and circumstances of the case and the above submissions made on behalf of both sides, I am of the view that primafacie it can be said that the petitioner was required to be supplied the documents for which reference was made in the letter dated 31.7.01 of the Director of Municipalities, but, at the same time, it can be gathered that the petitioner has not cooperated with the hearing. Therefore, Considering the over all facts and circumstances of the case, I find that the following directions would meet with the ends of justice:

(i) That the respondent No.3 shall supply to the petitioner the copy of the inquiry report made by the Mamalatdar together with the statements of witnesses on or before 2.7.02, and the petitioner or her representative shall make themselves available for collecting the copies on 2.7.02.

(ii) That the petitioner shall, thereafter, submit her reply to the show cause notice on or before 4.7.02 and the hearing shall be given by the Director of Municipalities on or before 8.7.02.

(iii) The Director of Municipalities shall pass shall pass appropriate order afresh after hearing the petitioner on or before 15.7.02.

7. It is made clear that the petitioner shall make herself available for hearing and under no circumstances the matter shall be adjourned and the date of hearing shall be communicated to the petitioner on 4.7.02 when the reply will be submitted by the petitioner.

8. It is also made clear that in the mean time until the Director of Municipalities passes the order afresh the petitioner shall not be allowed to continue as the councillor, but the rights of the petitioner shall be abided by the final order which shall be passed by the Director of Municipalities subject to the rights of the petitioner to challenge the same before appropriate higher forum.

9. It is also made clear that the Director of Municipalities shall pass the order afresh without being influenced by the observations made in his earlier order,

dated 6.6.02.

10. Rule is made absolute to the aforesaid extent with no order as to costs. Direct service permitted.

26.6.02 (JAYANT PATEL,J)